



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the
Request for Opinion concerning
the conduct of WARREN HARDY II,
Member of the Senate,
State of Nevada.**

Request for Opinion No.: 08-04C

EXECUTIVE DIRECTOR'S SUPPLEMENTAL REPORT AND RECOMMENDATION REGARDING JUST AND SUFFICIENT CAUSE

This case deals with Senator Warren Hardy, who in his private capacity is the Executive Director of the ABC-LV, a organization that represents non-union contractors.

A panel proceeding was held on April 10, 2008 and continued until June 30, 2008. At that proceeding, the panel members dismissed the allegations stemming from the 2003 Legislative Session stating "it would make sense not to be required or to force a subject to go back five years in time."

Based on the dismissal of the 2003 allegations, this Executive Director's Supplemental Report and Recommendation will only address Senator Hardy's conduct beginning in 2005.

Additional information was discovered since the initial panel proceeding. Hardy was properly noticed according to NAC 281.188.3 regarding these additional facts and he responded.

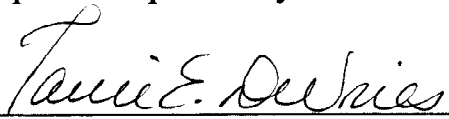
The additional facts are related to an alleged violation of NRS 281A.400.2, and specifically the facts are that:

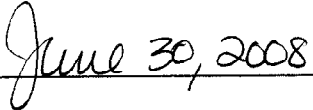
The *Member Resource Guide (Guide)* distributed by Associated Builders & Contractors, Las Vegas (ABC-LV) under the Government Affairs & Political Action section states, "Many of ABC Las Vegas' leaders are active at the state government level; either as a legislator or in electing legislators who support the 'merit shop philosophy.' They are backed up by ABC's professional lobbyists, at the state and national level, who successfully work to pass legislation that addresses the needs of merit shop contractors."

This guide was available on the ABC-LV website (<http://www.abclasvegas.org/user-assets/Membership%20Guide.pdf>) as late as the date of the panel proceeding in this matter.

Hardy responded that the statement in the *Guide* demonstrates that Hardy did not violate NRS 281A.400.2. First, the statement is a true statement of fact – Hardy, one of ABC-LV's leaders, is a legislator and the Nevada Ethics in Government Law specifically authorizes him to bring his personal and business philosophies, including the "merit shop philosophy," to the legislative process. Second, the statement was not made in a "marketing" context to encourage new membership in ABC-LV; instead it was included to make current members of ABC-LV aware of the resources available to them. Finally, the Ethics Commission has opined that merely being in a position to grant an unwarranted benefit is not prohibited. Furthermore, Hardy had no knowledge of the statement made in an isolated documentation on the ABC-LV's website. Therefore, because he had no knowledge of or had any intent concerning the inclusion of the statement in the *Guide*, an element of the test for a violation of NRS 281A.400.2 regarding the conduct by a public officer is lacking.

Report Prepared by:


Tami E. DeVries
Legal Research Analyst/Acting Investigator

Dated: 

Recommendation:

The Legislative declaration in the Ethics in Government Law and several Commission on Ethics' opinions recognize that Nevada has a citizen legislature and that as such individual legislators will bring their professional, family and business philosophies and perspectives to the legislative process. Our system assumes that Legislators will contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted. The law concerning ethics in government is not intended to require a member of the Legislature to abstain on issues which might affect his interests, provided those interests are properly disclosed and that the benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group. NRS 281A.020.2(c). (emphasis added.)

NRS 281A.420.6 provides for an initial disclosure by members of the Legislature that requires a Legislator to file his or her written disclosure with the Legislative Counsel Bureau. Further, this section of the law states that Legislators are not prohibited from requesting or introducing a legislative measure or to take any action before such introduction.

With these sections of the Ethics in Government Law in mind, the report and recommendations are as follows:

On the additional information discovered, the following recommendation is made on the allegation of a violation of NRS 281A.400.2 for the statement made in the *Guide*.

On the issue of using his position in government to benefit himself or to others he has a commitment in a private capacity, the recommendation is that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on whether Hardy violated NRS 281A.400.2.

Hardy was neither responsible for writing nor aware of the statement in the *Guide* referring to a legislator. In *The Nevada Commission on Ethics, an Agency of the State of Nevada v. Oscar B. Goodman*, Case No. 47165, the Nevada Supreme Court found that Mayor Goodman had not used his position in government by his personal conduct of: 1) agreeing to host the cocktail party in question; 2) handing out four or five invitations that included his name and title; and 3) suggesting that attendees pick up an informational folder on his son's company before leaving the party. If such direct activity by the public official is not a violation of NRS 281A.400.2, then the fact that someone included a reference to a legislator (unnamed) in the *Guide* without Hardy's knowledge is not a violation of the ethics law.

On the original allegations contained in the complaint are several bills that Hardy voted on allegedly in violation of NRS 281A. All the bills involve the construction industry. Since he represents non-union contractors, he is knowledgeable about the construction business.

On the issue of disclosure in the 2005 and 2007 Legislative Sessions, the recommendation is that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on whether Hardy violated NRS 281A.420.4 and NRS 281A.420.6.

Hardy followed the established protocol created by the Legislative Counsel regarding disclosure for members of the Legislature in accordance with NRS 281A.420.6. In 2005 he orally disclosed his relationship with ABC-LV in the Senate Committee on Commerce and Labor hearing on March 1, 2005 on S.B.116 and filed his written disclosure on March 3, 2005 with the Legislative Counsel Bureau. See Response, Exhibit 18, attached hereto. And in 2007 he orally disclosed in the Senate Committee on Government Affairs hearing on S.B. 13 his relationship with ABC-LV and also filed his written disclosure with the Legislative Counsel Bureau on February 14, 2007. See Response, Exhibit 19, attached hereto.

On the issue of abstention, the recommendation is made on a bill-by-bill basis for each Legislative Session as follows:

2005 Session:

S.B. 434 – a bill introduced by the Committee on Commerce and Labor on pool and spa contractors that makes no mention of union or non-union contractors. See Response, Exhibit 10, pages 1-2, attached hereto. Hardy voted to pass this bill. Since the bill treated all contractors equally, the recommendation is that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on whether Hardy violated NRS 281A.420.2 on this bill.

S.B. 467 - a bill introduced by the Committee on Government Affairs on public works projects that treats all contractors equally. See Response, page 1 of Exhibit 11, attached hereto. Hardy voted to pass this bill. The recommendation is that the Panel find that just and sufficient

cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on whether Hardy violated NRS 281A.420.2 on this bill.

A.B. 210 – a bill introduced by 21 assembly members in joint sponsorship with two senators some of whom are members of labor unions to encourage the construction industry to hire women and minorities. See Response, Exhibit 9, attached hereto. Hardy voted to pass this bill. Since the bill treats all contractors, union and non-union equally, the recommendation is that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on whether Hardy violated NRS 281A.420.2 on this bill.

2007 Session:

S.B. 201 – a bill sponsored by the Government Affairs Committee to authorize a public body to contract with a construction manager. See Response, Exhibit 8, attached hereto. Hardy voted to pass this bill. Since the bill treats all contractors equally, the recommendation is that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on whether Hardy violated NRS 281A.420.2 on this bill.

S.B. 279 – a bill introduced by the Committee on Commerce and Labor on the State Contractors' Board that applies to all contractors. See Response, Exhibit 5, pages 1-2, attached hereto. Hardy voted to pass this bill. The recommendation is that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on whether Hardy violated NRS 281A.420.2 on this bill.

S.B.509 – a bill introduced by the Committee on Government Affairs (On Behalf of the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities) in relevant parts apparently expands the kinds of public works projects on which prevailing wages must be paid. See Response, Exhibit 4, pages 1-16, attached hereto. Hardy voted to not concur with the Assembly's amendments to this bill, so the bill died. Non-union contractors, who Hardy is employed by, benefited by not having this legislation passed. The recommendation is that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion on whether Hardy violated NRS 281A.420.2 on this bill.

A.B. 56 – a bill introduced by the Committee on Commerce and Labor on unlicensed contractors that applied equally to all contractors. See Response, Exhibit 6, attached hereto. Hardy voted to pass this bill. The recommendation is that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on whether Hardy violated NRS 281A.420.2 on this bill.

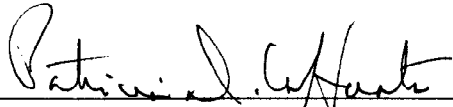
A.B. 110 – a bill introduced by 17 members of the Assembly and jointly sponsored by Hardy to continue a property tax exemption for certain apprentice programs. See Response, Exhibit 7, attached hereto. Hardy voted to pass this bill. Since the bill applied equally to all contractors, the recommendation is that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on whether Hardy violated NRS 281A.420.2 on this bill.

Conclusion:

Just and sufficient cause exists for the Commission to hold a hearing and render an opinion on the allegations against Hardy on S.B. 509 for violating NRS 281A.420.2. On all other bills and on disclosure, the allegations must be dismissed.

Only the full Commission has the authority to determine if his conduct in relation to these issues rises to the level of a violation of state law.

Approval and Recommendation by:



Patricia D. Cafferata, Esq.
Executive Director

Dated: June 25, 2008